

AMENDED IN ASSEMBLY AUGUST 26, 2004
AMENDED IN ASSEMBLY AUGUST 23, 2004
AMENDED IN ASSEMBLY SEPTEMBER 4, 2003
AMENDED IN ASSEMBLY JULY 6, 2003
AMENDED IN ASSEMBLY JUNE 19, 2003
AMENDED IN SENATE APRIL 22, 2003
AMENDED IN SENATE MARCH 25, 2003

SENATE BILL

No. 185

Introduced by Senators Sher and Escutia

February 12, 2003

~~An act to add Section 17203.7 to the~~ *An act to add Sections 17203.6, 17203.7, 17203.74, and 17204.3 to the* Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

SB 185, as amended, Sher. Representative actions.

Existing law defines unfair competition as including any unlawful, unfair, or fraudulent business act or practice, any unfair, deceptive, untrue, or misleading advertising, and other specified conduct relating to representations made to the public. Under existing law, an action for relief from an act of unfair competition may be brought by the Attorney General, a district attorney, county counsel, or a city attorney, or by a person acting for the interests of itself, its members, or the general public. Existing law provides various remedies for violations of the unfair competition laws.

~~This bill would require a private person bringing an unfair competition action on behalf of the interests of the general public to submit a copy of the complaint to the Attorney General.~~

This bill would require a proposed settlement in an unfair competition action brought or planned to be brought by a private person on behalf of the general public to be approved by a court, and would establish certain procedures in this regard. The bill would authorize any representative of a public agency, any party, any proposed party, or any other person directly affected by the alleged unfair competition practice to file an objection to the proposed settlement. The bill would also require the private person bringing the action to provide a specified notice to each defendant or proposed defendant. The bill would exempt actions brought or sponsored by specified labor organizations or by a nonprofit organization funded by designated legal entities from these requirements. The bill would require a private person filing an unfair competition action on behalf of the general public to show injury-in-fact to obtain restitution, unless the plaintiff is a tax-exempt nonprofit corporation or the action is brought or sponsored by specified labor organizations or by a nonprofit organization funded by designated legal entities. The bill would require unfair competition actions brought by a private person on behalf of the general public to submit a copy of the complaint and proposed settlement filings to the Attorney General.

This bill would specify that its provisions are not operative if the voters approve Proposition 64 at the general election on November 2, 2004.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. — Section 17203.7 is added to the Business and~~
2 *SECTION 1. Section 17203.6 is added to the Business and*
3 *Professions Code, to read:*
4 *17203.6. (a) An unfair competition action brought or*
5 *planned to be brought on behalf of the interests of the general*
6 *public by a private person or persons pursuant to this chapter may*
7 *not be settled or compromised in connection with the payment of*
8 *any money, including, but not limited to, restitution, attorney's*
9 *fees, or costs, unless the proposed settlement is reviewed and*
10 *approved by a court after making specified findings pursuant to*

1 *this section. As used in this section, “settlement” includes any*
2 *stipulations or agreements associated with a settlement, and*
3 *“settlement” also includes a dismissal of an unfair competition*
4 *action brought on behalf of the interests of the general public*
5 *where that dismissal is accompanied by or conditioned upon any*
6 *payment of money or the payment of attorney’s fees or costs.*

7 *(1) If the action has been filed, court review shall be conducted*
8 *upon noticed motion of any party, or a joint application of the*
9 *parties, or if no motion is filed, upon the court’s own motion.*

10 *(2) If the proposed action has not been filed, the party or parties*
11 *seeking to settle the proposed action shall file an “Application for*
12 *approval of settlement, Business and Professions Code Section*
13 *17200” with the superior court. The application shall be*
14 *accompanied by a declaration of an attorney attaching a proposed*
15 *complaint setting forth the cause of action proposed to be brought.*
16 *The application shall be accompanied by a first paper filing fee*
17 *pursuant to Section 26820.4 of the Government Code and shall be*
18 *served on all persons proposed to be named as parties.*

19 *(b) The parties seeking approval of the settlement shall file one*
20 *or more declarations setting forth the material facts of the claims*
21 *and the facts and circumstances that justify the settlement and a*
22 *memorandum setting forth the legal issues that justify the*
23 *settlement.*

24 *(c) Any representative of a public agency, any party, any*
25 *proposed party, or any other person directly affected by the alleged*
26 *unfair competition practice may file an objection to the proposed*
27 *settlement, including an objection to the payment of attorney’s fees*
28 *and costs. Any other person may seek to intervene in the settlement*
29 *approval proceedings pursuant to Section 387 of the Code of Civil*
30 *Procedure. Any person participating in the settlement approval*
31 *proceedings shall pay a motion filing fee with the first filing.*

32 *(d) The court shall consider the evidence and legal memoranda*
33 *submitted by the parties to the proposed settlement approval*
34 *proceeding. In proceedings where there are parties who are not*
35 *participating in the settlement and against whom claims are or*
36 *may become pending, the court shall review, in camera,*
37 *information submitted by the plaintiff or the potential plaintiff to*
38 *support the settlement pursuant to this section if the information*
39 *is protected by the attorney-client or attorney work product*
40 *privilege.*



1 (e) A court shall approve a proposed settlement if both of the
2 following apply:

3 (1) With respect to any monetary aspect of the settlement other
4 than a payment of attorney's fees or costs covered by paragraph
5 (2), if the court finds that it is fair and reasonable and adequately
6 protects the interests of the general public.

7 (2) With respect to the payment of attorney's fees and costs, if
8 the court finds that the proposed payment of attorney's fees or
9 costs, or both, is fair and reasonable. If Section 1021.5 of the Code
10 of Civil Procedure is applicable, the approval of a settlement of
11 attorney's fees shall be governed by that section.

12 (f) Any agreement to settle a claim in violation of this section
13 is contrary to public policy and shall be unenforceable.

14 (g) Nothing in this section prevents a court from ordering
15 preliminary injunctive relief prior to the proceedings described in
16 this section.

17 (h) An attorney who evades or attempts to evade the
18 requirements of this section or of Section 17203.7 or 17203.74 is
19 subject to disciplinary action by the State Bar of California.

20 (i) This section shall not apply if the action or cause of action
21 or proposed action meets either of the following conditions:

22 (1) It is brought or sponsored by a labor organization or by a
23 representative of a labor organization or by a joint labor
24 management committee established pursuant to the federal Labor
25 Management Corporation Act of 1978 (29 U.S.C. Sec. 175a).

26 (2) It is brought by a plaintiff represented by a nonprofit legal
27 services organization. For purposes of this section, a "nonprofit
28 legal services organization" is any nonprofit organization that
29 receives funds from either the federal Legal Services Corporation
30 or the State Bar of California.

31 SEC. 2. Section 17203.7 is added to the Business and
32 Professions Code, to read:

33 17203.7. (a) A private person bringing an unfair competition
34 action on behalf of the interests of the general public shall, within
35 10 business days after commencement of the action, submit a copy
36 of the complaint to the Attorney General.

37 (b) The Attorney General shall be served with a copy of any
38 motion or application for approval of a settlement pursuant to
39 Section 17203.6 at the same time as that motion or application is
40 filed with the court.

1 (c) The receipt of information pursuant to subdivision (a) or (b)
2 does not affect the right of the Attorney General to take any action
3 within his or her authority at any time.

4 SEC. 3. Section 17203.74 is added to the Business and
5 Professions Code, to read:

6 17203.74. (a) A private person asserting a claim of unfair
7 competition on behalf of the general public shall provide to each
8 defendant or proposed defendant, at the time of service of an initial
9 demand letter or a complaint, a notice containing the following
10 statement in boldface type:

11
12 “IMPORTANT LEGAL RIGHTS INFORMATION: California
13 law requires that you receive this notice about your legal rights.
14 You are receiving this notice because one or more of the claims
15 against you allege that you have committed an unlawful, unfair, or
16 fraudulent business act or practice. YOU HAVE IMPORTANT
17 LEGAL RIGHTS, AND YOU SHOULD KNOW THAT YOU ARE
18 NOT REQUIRED TO PAY ANY MONEY TO SETTLE ANY
19 CLAIM, INCLUDING CLAIMS OF ATTORNEY’S FEES AND
20 COURT COSTS, AT THIS TIME. YOUR RECEIPT OF A
21 DEMAND LETTER OR COMPLAINT DOES NOT
22 NECESSARILY MEAN THAT YOU WILL BE HELD LIABLE
23 FOR ANYTHING. You may wish to consult an attorney to get legal
24 advice regarding the complaint. In addition, the local bar
25 association in your county may also be able to provide legal
26 information about this type of lawsuit. If you choose not to use an
27 attorney, you may obtain additional information about how to
28 represent yourself on the California Courts Web site,
29 www.courtinfo.ca.gov.

30 YOU SHOULD ALSO KNOW THAT, TO PROTECT
31 DEFENDANTS OR PROSPECTIVE DEFENDANTS FROM THE
32 IMPROPER USE OF THE UNFAIR COMPETITION LAW,
33 CALIFORNIA LAW REQUIRES A COURT TO REVIEW IF ANY
34 PAYMENT OF MONEY OR ATTORNEY’S FEES BY YOU TO
35 THE PLAINTIFF OR HIS OR HER ATTORNEY FOR
36 SETTLEMENT OF AN UNFAIR COMPETITION CLAIM IS FAIR
37 AND REASONABLE UNDER THE FACTS AND THE LAW. Thus,
38 any agreement you made to pay another party’s attorney’s fees or
39 costs or to pay moneys in settlement shall be enforceable against
40 you only upon court review and approval of the settlement and

1 *attorney's fees and costs claim."*

2
3 *(b) The notice described in subdivision (a) shall be in at least*
4 *14-point boldface type and shall not contain any other statements*
5 *except those required in subdivision (a).*

6 *(c) An attorney who fails to comply with this section is subject*
7 *to disciplinary action by the State Bar of California.*

8 *(d) This section shall not apply if the action or cause of action*
9 *or proposed action meets either of the following conditions:*

10 *(1) It is brought or sponsored by a labor organization or by a*
11 *representative of a labor organization or by a joint labor*
12 *management committee established pursuant to the federal Labor*
13 *Management Corporation Act of 1978 (29 U.S.C. Sec. 175a).*

14 *(2) It is brought by a plaintiff represented by a nonprofit legal*
15 *services organization. For purposes of this section, a "nonprofit*
16 *legal services organization" is any nonprofit organization that*
17 *receives funds from either the federal Legal Services Corporation*
18 *or the State Bar of California.*

19 *SEC. 4. Section 17204.3 is added to the Business and*
20 *Professions Code, to read:*

21 *17204.3. (a) A private person who files an unfair competition*
22 *claim under Section 17204 on behalf of the general public shall*
23 *show injury in fact in order to have standing to secure an order for*
24 *restitution, unless the plaintiff is a nonprofit corporation*
25 *recognized by the Internal Revenue Service as tax exempt under*
26 *Section 501(c) of the Internal Revenue Code.*

27 *(b) This section shall not apply if the action or cause of action*
28 *or proposed action meets either of the following conditions:*

29 *(1) It is brought or sponsored by a labor organization or by a*
30 *representative of a labor organization or by a joint labor*
31 *management committee established pursuant to the federal Labor*
32 *Management Corporation Act of 1978 (29 U.S.C. Sec. 175a).*

33 *(2) It is brought by a plaintiff represented by a nonprofit legal*
34 *services organization. For purposes of this section, a "nonprofit*
35 *legal services organization" is any nonprofit organization that*
36 *receives funds from either the federal Legal Services Corporation*
37 *or the State Bar of California.*

38 *SEC. 5. Sections 1, 2, 3, and 4 of this act shall not become*
39 *operative if the voters approve Proposition 64 at the general*
40 *election held on November 2, 2004.*

1 ~~Professions Code, to read:~~
2 ~~17203.7.—(a) A private person bringing an unfair competition~~
3 ~~action on behalf of the interests of the general public shall, within~~
4 ~~10 business days after commencement of the action, submit a copy~~
5 ~~of the complaint to the Attorney General.~~
6 ~~(b) The receipt of information pursuant to subdivision (a) does~~
7 ~~not affect the right of the Attorney General to take any action~~
8 ~~within his or her authority at any time.~~

